

JOHN PEEBLES.

[To accompany bill H. R. C. C. No. 88.]

DECEMBER 7, 1858.

JANUARY 21, 1859.—Ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report in the case of

JOHN PEEBLES *vs.* THE UNITED STATES.

1. The petition of the claimant and amendment.
2. Claimant's account, appointment by J. A. Cuthbert, and authority from same to claimant to act, marked A, B, and C, transmitted to the House of Representatives.
3. Documents received from the Navy Department, in answer to orders of the Court of Claims, numbered 1, 2, 3, 4, 5, 6, 7, transmitted to House of Representatives.
4. Depositions of Elam Phillips and David Boston, offered by the claimant, transmitted to House of Representatives.
5. Depositions of John A. Cuthbert, offered by the government, transmitted to House of Representatives.
6. Opinion of the Court.
7. Bill allowing claimant *twenty-five dollars*.

By order of the Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Washington, this seventh day of December, A. D. 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

UNITED STATES COURT OF CLAIMS.

JOHN PEEBLES *vs.* THE UNITED STATES.

To the honorable the Court of Claims of the United States:

The petition of John Peebles, a citizen of the State of Alabama, respectfully represents that he is by profession a surveyor, in which business he has had many years experience. That on or about the 26th December, 1853, Mr. John A. Cuthbert made application to your petitioner to execute certain surveying for the government of the United States under his direction. Said Cuthbert represented himself as the agent of the United States, appointed by the Navy Department for the purpose of protecting the public lands of the government and the timber growing thereon, from waste and depredation, and that his agency was confined to the southern district of Alabama. Said Cuthbert further stated that trespassers were constantly committing depredations upon the public lands by cutting down and removing the timber; that he was instituting prosecutions against such trespassers in all cases where he could ascertain them; that, in order to perfect the proof against the defendants on the trials in court, it was necessary to employ surveyors to go upon the lands and run out the lines of the precise tracts trespassed upon, so as to be able to testify to the same in court. Said Cuthbert then proposed to employ your petitioner in this service, and believing he was invested with full authority for that purpose, your petitioner concluded a contract with him upon the terms following; the same not being in writing, but verbal.

Said Cuthbert agreed to pay your petitioner the sum of one hundred dollars per month, without stating any definite time for which petitioner was to be employed, and also agreed to reimburse petitioner all his necessary travelling expenses while so employed, as well as the expense of chain carriers, axe men and choppers, who might be employed by him in the surveys, of all which your petitioner was to keep, and did keep, an accurate account. In consideration of which payments to be made by said Cuthbert, your petitioner agreed to give his entire time to said service, to run the lines of tracts trespassed upon, in any part of said district, when required by said Cuthbert, or under his authority—to keep memoranda of the same—to testify to the same on the trials in court—and to make settlements with the depredators according to his best judgment, and upon terms and conditions which were drawn up and furnished your petitioner in writing by said Cuthbert.

Your petitioner further states that immediately after concluding said contract he proceeded to the discharge of his duties, and was in the employ of said Cuthbert for the period of seven months; that he devoted his whole time to said service with strict fidelity and in good faith; that at the two next succeeding terms of the circuit court of the United States he gave testimony both before the court and grand jury in sundry prosecutions for depredations upon the public lands. And during the whole of said service petitioner believes he gave entire satisfaction to said Cuthbert, as he never heard the least complaint of

the manner in which he discharged his duties. At the expiration of the said term of seven months, your petitioner presented his account to said Cuthbert for services rendered in pursuance of said contract, which account accompanies this petition, signed by petitioner, and marked A, and is for the sum of \$845 25. Said Cuthbert refused to pay said account, saying that he had no funds; and your petitioner then refused to work any longer under said contract.

Your petitioner is unable to say under what act of Congress the Navy Department, or Mr. Cuthbert, acting under its authority, employed him to perform said services. He supposed there was no doubt of said Cuthbert's authority. He was recognized here as the timber agent of the government. The prosecutions instituted by him against depredators were numerous, and no defences, so far as your petitioner is informed, were set up on the ground of a want of authority, either of law or from the Navy Department, on the part of said Cuthbert. Your petitioner received from said Cuthbert a commission, which accompanies this petition, and is dated January 21, 1854, and is marked B.

Your petitioner would further state that he is informed and believes that said Cuthbert's contracts with other surveyors, for like services, have been recognised by the Navy Department and the head of the Bureau of Yards and Docks, as of binding obligation upon the government. He therefore prays that the heads of those offices may be subpoenaed to testify before your honorable Court to that point.

Your petitioner further prays that subpoenas may issue to take the testimony of Elam Phillips, C. K. Godbold, and David Barton, citizens of the county of Mobile, and State of Alabama, by whom all the facts necessary to support the claim of your petitioner can be fully and satisfactorily proved, to the end that judgment may be rendered in favor of your petitioner for the amount of his aforesaid account.

IN THE UNITED STATES COURT OF CLAIMS.

JOHN PEEBLES *vs.* THE UNITED STATES.

To the honorable Court of Claims:

The petitioner, by his attorney, respectfully represents that leave having been granted by this honorable court to amend the petition of the claimant (John Peebles,) so as to allege the proceedings had in the case in the Navy Department—the same having been omitted in the original petition—he now states that application for payment of the claim of said Peebles, which is the matter in controversy in this case, was made to the Chief of the Bureau of Docks and Yards of said Navy Department, and that it was refused, on the ground that the service, as he alleges, was not authorized, and the account was not certified to be correct by Mr. Cuthbert, the agent of the department; all of which will appear on reference to the letters of Commodore Joseph Smith, Chief of the Bureau of Yards and Docks of the Navy

Department, dated the 6th and 16th of March, 1858, and herewith presented to the Court, and which it is requested may be received and filed in the case.

All of which is respectfully submitted, by

J. F. POLK,
Attorney for John Peebles.

A.

The United States Dr., by John A. Cuthbert, timber agent, southern district of Alabama, by contract with John Peebles, on December 27, 1853, to August 11, 1854.

For seven months' services as a surveyor, (and his expenses to be paid him,) at one hundred dollars per month..... \$700 00

For the contingent account for expenses in travelling, chain bearers, and choppers—

December 27, 1853. For one days' travel, and ferry boat, to Mobile, by order of a subpoena from United States court...	3 70
December 30, 1853. For cash paid Mobile ferry boat to Baldwin county, on a survey and examination of lands.....	1 00
December 30, 1853. Return to Mobile to report ferry boat, and board.....	4 00
January 10, 1854. Paid steamer Fashion, passage to Oven Bluff, Clark county, on a survey, United States against Dubose, for a trespass.....	3 00
January 10, 1854. Paid steamer Fashion, return to Mobile.	3 00
January 22, 1854. Paid steamer Cuba, passage to Saint Stephen's land office, after maps, &c., for use of department	4 00
January 22, 1854. Paid board at Saint Stephen's.....	5 00
February 2, 1854. Paid steamer Bellgates, passage from Saint Stephen's to Mobile	3 00
February 3, 1854. Paid for one ream coarse writing paper, in Mobile.....	1 00
Paid ferry boat of Mobile, to Baldwin county.....	1 00
Paid, all night at Stockton, self and horse.....	1 25
Paid at Gainstown ferry, Alabama river, self and horse.....	25
Paid expenses at town of Jackson, Clark county, while examining lands in that neighborhood.....	3 00
Paid, all night at Cox's, \$1, all night at Wood's Bluff, \$1	2 00
Paid board at Kelley's, Clark county, examining neighborhood.....	5 00
Paid, en route to Demopolis land office, at Glover's all night	1 25
Paid board at Demopolis, self and horse, procuring township maps, eight days.....	16 00
Paid, return from Demopolis, all night at Bradford.....	1 25
Paid, all night at Choctaw Corner, Mr. Taylor's.....	1 00
Paid, all night at Sugsville, Clark county.....	1 25

Paid at Gainstown ferry, Alabama river.....	\$0 25
Paid, all night at Stockton, self and horse.....	1 25
Paid ferry boat to Mobile.....	1 00
Paid board at Mobile, attending United States Court.....	4 00
Paid steamer passage to junction of Beckbee and Alabama rivers, on survey, United States <i>vs.</i> John Stalls*... ..	3 00
Paid board to Webb, while on survey and examination.....	5 00
Paid George Mashow, chain bearer, \$1 50 per day, 5 days..	7 50
Paid Samuel Hutchinson, chain bearer, 1 day	1 00
Paid John Averith, chain bearer, \$1 50 per day, 7 days.....	10 50
Paid Reuben McDonald, chopper, \$1 50 per day, 7 days....	10 50
Paid to return to Mobile by land, all night at Stockton.....	1 00
Paid ferry boat to Mobile to report, and return.....	2 00
Paid ferry boat, self and horse, to Mobile.....	2 50
Paid board in Mobile, while writing in agent's office.....	2 25
Paid board for horse, Mobile, same time.....	3 00

(Leave Mobile for St. Stephen's land office.)

Paid ferry at Chickasawboge creek, 10 cents; Cedar creek, 10 cents	20
Paid board, self and horse, at St. Stephen's.....	10 00
Paid return ferry, at Cedar creek, 10 cents; Chickasawboge, 10 cents.....	20
Paid, all night at Slade.....	1 00
Paid board at Mobile.....	1 25
Paid passage on railroad car to Citronell.....	90
Paid, return by the same, to Mobile.....	90
Paid board for horse, Mobile.....	10 00

Amount..... 845 25

JOHN PEEBLES.

The United States to Reuben McDonald, Dr.

May 13, 1854. For the hire of one hand as a chopper for a survey by John Peebles, surveyor in the case of the United States timber agent *vs.* John Stalls, for a trespass, at the rate of one dollar and fifty cents per day, for seven days..... \$10 50

Received of John Peebles, surveyor, the above account, ten dollars and fifty cents, in full.

R. McDONALD.

* This case was a bad swamp.

The United States to John Avis, Dr.

May 13, 1854. For hire to bear the chain for a survey by John Peebles, surveyor, in the case of the United States timber agent *vs.* John Stalls, for a trespass at the rate of one dollar and fifty cents per day for seven days..... \$10 50

Received of John Peebles, surveyor, the above account, ten dollars and fifty cents, in full.

W. J. AVIS.

B.

UNITED STATES OF AMERICA, }
Southern District of Alabama. }

By virtue of authority in me vested, I hereby designate and appoint you to ascertain the boundaries of the lands belonging to the government of the United States, appurtenant to the land office at St. Stephens, when ascertainment of lines, by surveys, shall be necessary in the operations of my agency.

JOHN A. CUTHBERT,
U. S. Timber Agent, South. Dist. Ala.

To JOHN PEEPLES, Esq.

JANUARY 21, 1854.

C.

UNITED STATES OF AMERICA, }
Southern District of Alabama. }

Know all men by these presents, that for the advancement of the public interests in the protection of government timber, and the convenience of parties wishing to make a lawful settlement for timber which they have cut on, or taken from lands belonging to the government of the United States, I hereby authorize and empower John Peebles to make settlements for timber of any and every kind, cut on or taken from said lands, according to the following regulations, viz :

John Peebles must determine, according to the best of his information and judgment, the number of trees cut on, or taken from government lands, by the trespasser, and he must in like manner ascertain the value of such trees, in the neighborhood.

The trespasser must pay three times the value of the trees cut or taken by him, ascertained as above.

In the receipt and discharge given to the trespasser, John Peebles must specify the number and kind of trees, and the land on which they were cut, or from which they were taken.

JOHN A. CUTHBERT,
United States Timber Agent.

AUGUST 16, 1854.

No. 1.

BUREAU OF YARDS AND DOCKS,
December 13, 1856.

SIR: The bureau has the honor to acknowledge the receipt of the order of the Court of Claims, of date of the 10th instant, for a copy of the commission to John A. Cuthbert, late timber agent in Alabama, and for any other documents or evidence in relation to the claim of John Peebles, now pending in said court.

Upon examination of the records of this bureau, it is found that Peebles' case is referred to in Mr. Cuthbert's letter of November 28, 1854, and again in the receipt given by Peebles to Cuthbert, 24th of June, 1854, for the sum of twenty-five dollars, for surveying; copies of which are herewith enclosed. A copy of the commission or instructions to Mr. Cuthbert, dated July 27, 1853, is also forwarded.

The order of the Court is herewith returned.

I have the honor to be, very respectfully, yours, &c.,

JOS. SMITH.

Hon. J. C. DOBBIN,
Secretary of the Navy.

BUREAU OF YARDS AND DOCKS,
July 27, 1853.

SIR: The Secretary of the Navy having decided to consolidate into one the timber agencies of Alabama. and having appointed you the timber agent for that State, I have been directed to forward for your government the following instructions:

It will be your duty to preserve from waste, destruction, removal, and from every species of depredation, all the timber and wood growing, standing, or being upon the public lands in the State; but more especially the live oak, red cedar, and long leaf yellow pine, suitable and valuable for naval purposes.

For any information you may require to enable you to designate public from private lands, you will apply to the surveyor general of the State, and to the different land offices in your district. If necessary, you will seek the legal advice of either of the United States district attorneys within your reach; and you will invoke the assistance, not only of the civil authority, but so far as it can be lawfully given, likewise that of the army and the navy, for the successful accomplishment of the important trust committed to you.

The department relies upon your unremitting exertions, and a prompt resort to all proper means within your power to the effectual discharge of this duty. It is also required by the department that you shall engage in no business whatever which shall interfere with or prevent a faithful discharge of your duties as timber agent.

Your compensation will be at the rate of fifteen hundred dollars; and it is to be distinctly understood that the per annum compensation of fifteen hundred dollars is the only allowance that will be made under any circumstances whatever, except for horse and boat hire,

surveying, the procuring of township maps, and other *similar* expenses inseparably connected with an efficient performance of your public duties.

For all expenses incurred by you on public account, you will take receipts in triplicate, and transmit a statement thereof quarterly to the Fourth Auditor of the Treasury for settlement; and in all your expenses it is expected that the most rigid economy will be observed. Your predecessors, Messrs. Hardy Wilkins, of Montgomery, and Nathaniel Davis, of Limestone county, will be directed to turn over to you all the public property in their possession having reference to your agency. For the property thus received you will exchange duplicate receipts, and forward copies thereof for file in this bureau.

You will report monthly to the bureau, and oftener if necessary, statements in detail, making the department intimately acquainted with all your proceedings.

Respectfully, your obedient servant,

JOS. SMITH.

JOHN A. CUTHBERT, Esq.,

U. S. timber agent, Mobile, Ala.

Extract from letter of John A. Cuthbert, United States timber agent, southern district of Alabama, dated Novembr 28, 1854, so far as it relates to the case of John Peebles.

"I had surveys completed for twelve of my cases in the court at Mobile, and for all of my cases but one, in the court at Montgomery.

"Mr. John Peebles had a high reputation as an industrious and accurate surveyor; and early in the summer I had engaged him to make the surveys for all the residue of my cases. In August, I think about the middle of the month, he entered into a direct and absolute engagement with me to make the surveys for all these cases; to commence the work immediately, and not to stop until the whole was completed. This engagement was made immediately after I had rejected his fictitious account against the government. It was a good job for him. He evinced an earnest wish to get it, and I believed he would execute his contract with me. In October I again directed my attention to the surveys, and to my very great surprise, I found that Mr. Peebles had not commenced them. I then went on a route for the very purpose of engaging another surveyor, and I endeavored to find Mr. A. B. W. Kennedy, whom I believe to be a good surveyor. He had some surveys on hand at the time, and I could not procure his services immediately, but I was informed that he wished to engage with me, and he promised to meet me in Mobile." * * * * *

"I afterwards saw Mr. Kennedy and engaged his services, and I have no doubt that he is now making the surveys."

"Just before the interview with Mr. Requier, I had been informed that Bradford, a surveyor, whose testimony was important to me, had gone to Texas; and a friend had told me that Peebles was bribed to

defeat me, and it was to these matters that I alluded in my remark to Mr. Requier. On further reflection I do not believe that Peebles was bribed, but he found as good employment from private persons, and I believe that he left me in resentment."

Received of Judge J. A. Cuthbert, at Mobile, this 24th day of June, 1854, twenty-five dollars on account of expenses in surveying the public lands on account of trespasses.

JOHN PEEBLES,
Surveyor, southern district Alabama.

No. 2.

BUREAU OF YARDS AND DOCKS,
January 20, 1857.

SIR: The bureau has the honor to acknowledge the receipt of the order of the Court of Claims, dated the 14th instant, in relation to the case of John Peebles *vs.* The United States, asking for information in regard to the regulations of the Navy Department for the appointment of timber agents, with their powers relating to the preservation of live oak and other timber, for naval purposes, and requesting copies thereof, as well as for any other information tending to elucidate the claim of said Peebles.

The 3d section of the act of Congress of March 3, 1827, authorizes the President of the United States to take proper measures to protect the live oak timber suitable for naval purposes, growing upon the public lands. Under this authority the Secretary of the Navy has from time to time, as the public interests required, appointed timber agents in the States of Florida, Alabama, Mississippi, and Louisiana, whose special duty it is to take care of the public interests in this regard.

Mr. John A. Cuthbert was appointed timber agent for the southern district of Alabama on the 27th July, 1853, and a copy of his commission or instructions was sent to you (in answer to an order of the Court of Claims dated December 10, 1856) on the 13th of December last; also copies of the correspondence of Cuthbert with the bureau relating to the claim of the said John Peebles for surveying.

The order of the Court of Claims is herewith returned.

I have the honor to be, very respectfully, your obedient servant,
JOS. SMITH.

Hon. J. C. DOBBIN, *Secretary of the Navy.*

No. 3.

BUREAU OF YARDS AND DOCKS,
October 13, 1857.

SIR: I have the honor to acknowledge the reference of the order of the Court of Claims of date the 12th instant, requesting evidence to be furnished in the suit of John Peebles *vs.* The United States;

and, in reply, state that the timber agents under the Navy Department for the State of Alabama were not authorized to employ surveyors, except when specially directed to do so by this bureau, and that no general or special authority or directions were given to Mr. Cuthbert to employ Mr. Peebles.

Surveyors have been paid by the Navy Department, when properly and specially employed by its agents, at the usual rates allowed in the State for such duty, on bills specifying the lands surveyed which are certified to be correct by the agents, and approved by this bureau.

The bureau would respectfully state that there is no other evidence in the records of the department relating to this case than that heretofore communicated in letters to the Secretary of the Navy, dated respectively December 13, 1856, January 20, 1857, and the 29th of July last.

Enclosed herewith is a copy of the bureau's letter of instructions to Mr. John A. Cuthbert, late timber agent in Alabama, dated July 27, 1853.

The papers are herewith returned.

I have the honor to be, very respectfully, your obedient servant,
JOS. SMITH.

Hon. ISAAC TOUCEY,
Secretary of the Navy.

BUREAU OF YARDS AND DOCKS, *July 27, 1853.*

SIR: The Secretary of the Navy having decided to consolidate into one the timber agencies of Alabama, and having appointed you the timber agent for that State, I have been directed to forward for your government the following instructions:

It will be your duty to preserve from waste, destruction, removal, and from every species of depredation, all the timber and wood growing, standing or being upon the public lands in the State, but more especially the live oak, red cedar, and long leafed yellow pine, suitable and valuable for naval purposes. For any information you may require to enable you to designate public from private lands, you will apply to the surveyor general of the State and to the different land offices in your district. If necessary, you will seek the legal advice of either of the United States district attorneys within your reach, and will invoke the assistance not only of the civil authority, but so far as it can be lawfully given, likewise that of the army and navy, for the successful accomplishment of the important trust committed to you.

The department relies upon your unremitting exertions, and a prompt resort to all proper means within your power to the effectual discharge of this duty. It is also required by the department that you shall engage in no business whatever which shall interfere with or prevent a faithful discharge of your duties as timber agent.

Your compensation will be at the rate of fifteen hundred dollars, and it is to be distinctly understood that the per annum compensation of fifteen hundred dollars is the only allowance that will be made under any circumstances whatever, except for horse and boat hire, surveying,

the procuring of township maps, and other *similar* expenses inseparably connected with an efficient performance of your public duties.

For all expenses incurred by you on public account, you will take receipts in duplicate, and transmit a statement thereof quarterly to the Fourth Auditor of the Treasury for settlement; and in all your expenses it is expected that the most rigid economy will be observed. Your predecessors, Messrs. Hardy Wilkins, of Montgomery, and Nathaniel Davis, of Limestone county, will be directed to turn over all the public property in their possession having reference to your agency. For the property thus received you will exchange duplicate receipts and forward copies thereof for file in this bureau.

You will report monthly to the bureau, and oftener, if necessary, statements in detail, making the department intimately acquainted with all your proceedings.

Respectfully, your obedient servant,

JOS. SMITH.

JOHN A. CUTHBERT, Esq.,
U. S. Timber Agent, Mobile, Alabama.

No. 4.

BUREAU OF YARDS AND DOCKS,
October 23, 1857.

SIR: I have the honor to acknowledge the reference of the order of the Court of Claims, dated the 20th instant, in relation to the case of John Peebles *vs.* The United States, and in reply to the first interrogatory state, that the records of this bureau do not show that any special directions issued to Mr. John A. Cuthbert, late timber agent in Alabama, to employ either the Messrs. Bradford or A. R. W. Kennedy as surveyors.

But it does appear that these parties were employed by Mr. Cuthbert to make surveys and examinations of certain sections of land, which they did; that their accounts for said service were presented by said Cuthbert, duly certified, for payment, and that the bureau approved them.

2. It has necessarily been the practice of the department to confide to the timber agent for Alabama, and to the agents for other States, the making of contracts with surveyors when their services are required by the public interests.

3. It has been the general practice of the department to allow the accounts of surveyors when properly vouched and certified by the agent. In some cases of palpable overcharge, the bureau has suspended the accounts of surveyors for want of authority or for explanation.

I know of no other evidence in this bureau tending to elucidate the claim of John Peebles *vs.* The United States which has not previously

been communicated in letters dated December 13, 1856, January 20, July 29, and October 13, 1857.

The order of the Court of Claims is herewith returned.

I have the honor to be, very respectfully, your obedient servant,
JOS. SMITH.

Hon. ISAAC TOUCEY,
Secretary of the Navy.

No. 5.

BUREAU OF YARDS AND DOCKS,
November 18, 1857.

SIR: The bureau has the honor to acknowledge the reference of the order of the Court of Claims, dated the 17th instant, in the case of John Peebles *vs.* The United States, requesting certain copies of correspondence, and in reply states that a copy of the bureau's letter to the Secretary of the Navy, dated August 2, 1854, in respect to the Messrs. Bradford's account is herewith enclosed.

In reference to the second inquiry the records do not show that the bureau made any reply to Mr. Cuthbert's letter of the 14th of March, 1857, in which objections and reasons are stated why Peebles' claim was not well founded. But it does appear that said letter was forwarded to the Assistant Solicitor of the Court of Claims, Mr. Ratcliffe, a copy of which is herewith transmitted.

The order of the Court is herewith returned.

I have the honor to be, very respectfully, your obedient servant,
JOS. SMITH.

Hon. ISAAC TOUCEY,
Secretary of the Navy.

No. 6.

WASHINGTON, March 14, 1857.

DEAR SIR: Your communication of the 5th instant has been received. I have endeavored to recall to mind the material facts in relation to the claim of John Peebles against the United States, and I feel certain that my recollection of them is clear and reliable. The claim is fraudulent in every part.

I engaged the Bradfords' to survey lands in the county of Washington, in preparation for prosecutions that had been commenced. I had been in the county of Clarke, and had there seen a considerable number of ship spars hewn, but not yet hauled away, and I had information that persons not known to me had been getting spars in another part of the same county. I engaged Peebles to go into Clarke county, to ascertain the government land on which spars had been cut, and to survey them.

I expected him to report what work he might do in a shape in which I could act on it, and to pay him the customary price for what work he might do. I did not enter into any contract to employ him by the month, or to pay his expenses. In all cases when I employed surveyors, I found it expedient to give them written authority, in order to prevent their being interrupted by trespassers who might wish to prevent the surveys.

Mr. Peebles reported to me one case of trespass, where lightwood had been cut on the public land. The lightwood was seized under my authority, and a prosecution was commenced; and Mr. Peebles was summoned as a witness, and failed to attend. This was the only case of trespass of which he ever gave me information, and he was never summoned as a witness in any other case by my direction or within my knowledge. I remember well that during the time covered by his account, I inquired of David Barton whether he knew where Mr. Peebles was, for I was surprised that he gave me no information about spars; and Barton told me, in reply, that Peebles was in his employment, hunting trespasses for him (Barton) to return as informer.

In the middle or latter part of April, 1854, a raft of cypress logs was brought down Mobile river, which I was informed had been taken from government land. I engaged Peebles to go to the place and ascertain, by making a survey, whether the land from which they had been taken belonged to the government. I have no doubt that Peebles made this survey, and the one above mentioned. He never reported any other survey to me. I have never heard of his making any other survey for the government. He never gave me any information in relation to trespasses, except in the two cases above mentioned.

He asked me for twenty-five dollars, saying that he wanted money to pay chain carriers, not presenting any account to me. I paid him the twenty-five dollars, and he gave me a receipt, the language of which seems to favor his claim. I have no recollection why the receipt was written in this form; but I conjecture that it was so written at the request of Peebles, with the design of entrapping me.

I suppose that there is a balance due to Peebles on the two surveys above mentioned; but his account is fraudulent *in toto*.

With high regard,

JOHN A. CUTHBERT.

JOS. SMITH, Esq.,

Chief of Bureau of Yards and Docks.

No. 7.

BUREAU OF YARDS AND DOCKS,
July 29, 1857.

SIR: The bureau has received the letter of Mr. Daniel Ratcliffe, Assistant Solicitor of the Court of Claims, which you referred yesterday for a report upon certain questions in reference to the suit of John Peebles *vs.* The United States, for alleged service as surveyor in the

employ of Mr. John A. Cuthbert, late timber agent for the southern district of Alabama.

The first question is:

“Under what authority was the contract made by Mr. Cuthbert, upon which the petitioner founds his demand?”

Mr. Cuthbert had no other authority from this bureau than its general instructions of the 27th of February, 1853, (a copy of which has been previously furnished) to make a special contract with Mr. Peebles for surveying the public lands.

The rule of the department is now, and has been heretofore, that if a timber agent reports a necessity for the services of a surveyor, and that by the employment of such an officer the public interests may thereby be advanced, authority is then vested in said agent to employ one, or not, as the judgment of the bureau may decide.

2. “What is the rule or measure by which surveyors are paid for services in cases like the one referred to?”

The rule or measure of compensation to surveyors, sanctioned by the bureau, is that which obtains in the State either by law or usage; or such sum per day; or for a given job, as may be agreed upon by the authorized agent of the department and the surveyor.

3. “What was the character of Mr. Cuthbert whilst connected with the government as timber agent; and how did he discharge his duties?”

The Bureau had a high estimate of the character of Mr. Cuthbert. He was a capable and efficient officer, and discharged his duties with industry and fidelity.

Mr. Ratcliffe's letter is herewith returned.

I have the honor to be, very respectfully, your obedient servant,
JOSEPH SMITH.

Hon. I. TOUCEY,
Secretary of the Navy.

IN THE UNITED STATES COURT OF CLAIMS.

JOHN PEEBLES, CLAIMANT, *vs.* THE UNITED STATES.

The claimant proposes to propound the following interrogatories to David Barton, before R. B. Owen, esq., commissioner of the Court of Claims, at his office in the city of Mobile, Alabama, on the 26th day of the present month, June, 1857, at 10 o'clock in the morning, or before some other commissioner of said Court at the same time and city, and at his office or place of business, whose answers will constitute his deposition as rebutting testimony to that taken by the United States Solicitor on the part of the United States, and is intended to be used as evidence in the case of John Peebles against the United States now pending in said court.

The following are the interrogatories referred to in the foregoing, viz:

1st interrogatory. Do you know whether John A. Cuthbert did or did not discharge his duties as United States timber agent with

fideliſy, in the proſecution of depredators upon the public lands during the years 1854 and 1855? If yea, ſtate all you know on the ſubject.

2d and laſt interrogatory. Do you know of any other matter relative to the claim in queſtion? If yea, ſtate it.

Of all which, the Solicitor of the United States for the Court of Claims, is requested to take notice.

J. F. POLK,

Attorney of Record for the claimant.

WASHINGTON, D. C.

NOTE After the witness has been sworn, and before he answers the first question, the commissioner will not forget to require him to state his name, his occupation, his age, his place of residence for the past year; whether he has any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, he is related to the claimant.

Notice accepted, ſubject to objections to the testimony, June 2, 1857.

DAN'L RATCLIFFE,

Assistant Solicitor of Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.—No. 601, GENERAL DOCKET.

JOHN PEEBLES *vs.* THE UNITED STATES.

To the Solicitor of the United States for the Court of Claims:

SIR: The petitioner in the case referred to above, is desirous of having the name of C. M. Godbold associated with that of David Barton named in the notice recently acknowledged by you, as a witness in said case, and whose deposition it was proposed should be taken in the form of his answers to the interrogatories which accompanied said notice, before R. B. Owen, esq., a commissioner of the Court of Claims, at his office or place of business in the city of Mobile, at the hour of ten o'clock in the morning, on the 26th day of this present month, June, 1857; and it is requested that you will make no objection to the association of the name of said C. M. Godbold as aforesaid, in order that the same interrogatories as were proposed to be propounded to the said David Barton, may also be propounded to said Godbold by the same commissioner, and at the same time and place, and his answers to the same to be taken down and forwarded to the Court of Claims as his deposition in the case, in like manner as those of the said Barton.

With great respect, your obedient servant,

J. F. POLK,

Attorney of Record for the Claimant.

I consent.

M. BLAIR, *Solicitor.*

WASHINGTON, June 17, 1857.

IN THE COURT OF CLAIMS.

JOHN PEEBLES, CLAIMANT, *vs.* THE UNITED STATES.UNITED STATES OF AMERICA, *southern district of Alabama.*

Be it remembered, that I, Richard B. Owen, a commissioner of the Court of Claims, duly commissioned and qualified, did, on this 26th day of June, A. D. 1857, cause to come before me at my office in the city of Mobile, district and State aforesaid, pursuant to the notices hereto attached, David Barton and C. M. Godbold, the witnesses in said notices named, to testify on the part of the claimant in said cause above named.

And the said Barton and Godbold having been by me first sworn to speak the truth, the whole truth, and nothing but the truth in the cause, did, thereupon, depose and say in answer to the questions hereinafter written in manner, words, and form as is hereinafter under each question written.

Witness first states:

My name is David Barton; I am fifty years old; my occupation that of a farmer and land agent; I have resided for the last year in Mobile county; I am in no way related to the claimant, and have no interest direct or indirect in the claim.

Question 1. Do you know whether John A. Cuthbert did or did not discharge his duties as United States timber agent, with fidelity, in the prosecution of depredators upon the public lands, during the years 1854 and 1855? If yea, state all you know on the subject.

Answer 1. He neglected a great deal of business he ought to have attended to; I was during the time inquired of, his deputy in the timber agency; he employed the claimant and other surveyors to go out upon the public lands and ascertain where depredations had been committed, and who were the depredators; when they found that timber had been cut on lands which by surveys they ascertained to be public lands, many of the depredators were willing on the spot to pay for the timber so cut, at the government price; the surveyors would then notify by letter Mr. Cuthbert of this willingness to settle on the part of depredators, and request him to come immediately to the scene of the depredations, which he invariably neglected to do. In consequence of his not coming, the cases went to prosecution; and at the time of the session of the court, he would meet the parties at court and then compromise with them at rates far below what the law authorized; and below what I or the surveyors could have effected on the spot; if he had have done his duty compromises could have been made, which would have made for the government a great deal of money after paying the expenses of the surveyors. There were complaints on the part of the district attorney and the surveyors against Cuthbert on account of his neglect of duty as before stated. These complaints were frequent.

Question 2. Do you know of any other matter relative to the claim in question? if yea, state it.

Answer 2. He must have compromised not less than one hundred

cases in the manner stated by me in my last answer. The compromise so made by him would not average three cents a tree for the timber so cut; whereas, had the compromise been rightly managed, they would have yielded three dollars a tree. Timber cut on public lands was seized at several mills and watchmen placed over it; and when the settlements were made the compromise did not realize enough to pay the watchmen.

Claimant was always in attendance as regularly at court as a witness as a man could be. On one occasion he was in attendance in obedience to a subpoena, and during a session of court he was sent off by Cuthbert to do a job of surveying, and whilst absent on this duty he was called as a witness, and being absent he was fined. This is the only instance in which he was absent when wanted, and in this case, at the next term of the court, his fine was remitted on an explanation of the circumstances. I know nothing more than I have already stated in my previous deposition.

DAVID BARTON.

Subscribed and sworn to before me this 26th of June, 1857.

R. B. OWEN, *Commissioner*.

At this point the further examination of witnesses was continued to Saturday, June 27, at 10 a. m.

R. B. OWEN, *Commissioner*.

MOBILE, June 27, 1857.

The examination of witnesses being this day resumed, pursuant to adjournment, C. M. Godbold was by me duly sworn, and did thereupon depose and say as follows:

Question 1. Do you know whether John A. Cuthbert did or did not discharge his duties as United States timber agent with fidelity in the prosecution of depredators upon the public lands during the years 1854 and 1855? If yea, state all you know on the subject.

The witness having answered that he is forty-eight years of age; is United States marshal for the southern district of Alabama; that he has resided for the year past in Mobile county; that he is in no way related to the claimant nor interested directly or indirectly in the claim, to the above written question answers and says:

Answer 1. I cannot specify any particular act of Judge Cuthbert in which he was culpable in the discharge of his duties, but I know that the complaints against him in his official capacity were frequent and loud.

Question 2. Do you know any other matter in relation to the claim in question? If yea, state it.

Answer 2. During the years mentioned I frequently saw the claimant Peebles, and always understood that he was employed as a surveyor for the government. I saw his statements and the reports which he made. I consulted him frequently, officially, as to the whereabouts of persons; and, at the request of Judge Cuthbert, gave

him written authority to summon witnesses in the prosecution of depre-
dators wherever and whenever he found them. Claimant himself was
subpoened by me regularly at every term of court as a witness, and I
have seen him frequently on the stand as a witness called by the
timber agent Cuthbert, and he was always interrogated as a surveyor
and answered as to information which he got in that capacity.

The services of the claimant as a surveyor were valuable to the
government, for the information which he obtained as such, and was
able to impart on the trials, was reliable; and convictions could not
be had without such facts as he testified to.

C. M. GODBOLD.

Signed and sworn to before me this 27th of June, 1857.

R. B. OWEN, *Commissioner*.

STATE OF ALABAMA, *Mobile county*.

On this 26th and 27th days of June, A. D. 1857, personally came
David Barton and C. M. Godbold, the witnesses above named, and
after having been first sworn to tell the truth, the whole truth, and
nothing but the truth, the questions contained in the foregoing depo-
sition were written down by the commissioner, and then proposed by
him to the witnesses; and the answers thereto were written down by
the commissioner in the presence of the witnesses, who then subscribed
each his own deposition in the presence of the commissioner.

The depositions of D. Barton and C. M. Godbold, taken at the
request of John Peebles, to be used in the investigation of a claim
against the United States now pending in the Court of Claims in the
name of John Peebles. The adverse party was notified, did not
attend, and did not object.

R. B. OWEN, *Commissioner*.

Commissioner's fees, \$5. Paid by claimant.

R. B. OWEN.

UNITED STATES COURT OF CLAIMS.

[No. 601 on the general docket.]

JOHN PEEBLES *vs.* THE UNITED STATES.

SIR: At the hour of ten o'clock, before noon, on the 4th of August,
1856, at the office of R. B. Owen, esq., one of the commissioners
for taking testimony under appointment of the Court of Claims, and
in the city of Mobile, Alabama, I propose to take the depositions of
Elam Philips, C. K. Godbold, and David Barton, by said R. B. Owen,
esq., or some other like commissioner, in the said city of Mobile, and

at his proper place of business, to be used in the case of John Peebles against the United States, now pending in said Court.

Of all which please take notice.

Very respectfully, your obedient servant,

J. F. POLK,

Attorney of record for Claimant.

M. BLAIR, Esq.,

Solicitor for the United States.

WASHINGTON CITY, D. C.

Notice served June 27, 1856.

WASHINGTON CITY, D. C.

The following are the questions the answers to which of Elam Philips, C. K. Godbold, and David Barton, it is proposed to take by R. B. Owen, esq., or some other commissioner for taking testimony under appointment of the Court of Claims of the United States, in the city of Mobile, Alabama, on the 4th day of August, 1856, to be used as testimony in the case of John Peebles against the United States, (No. 601 on the general docket,) now pending in said Court, viz:

The first question. Your name; your age; your occupation, and your place of residence during the past year?

Second question. Have you any interest direct or indirect in the claim which is the subject of inquiry, and are you related to the claimant? If yea, in what degree?

Third question. Are you acquainted with John Peebles, the claimant in this case? If yea, state how long you have known him, and what is his character as a man and a surveyor; and also for truth and fidelity in the discharge of his professional duties?

Fourth question. Have you any knowledge of a contract entered into by said Peebles and John A. Cuthbert, in virtue of which said Peebles was to execute certain surveying for the United States? If yea, state the terms of said contract; when it was entered into; the purpose for which the surveying was to be done, and in what capacity said Cuthbert entered into the contract.

Fifth question. Do you know whether said Peebles was commissioned by said Cuthbert to execute surveying under said contract?

Sixth question. Do you know whether said Peebles executed said contract on his part? If yea, state all you know on that point. State, also, what you know of the time he was employed, the difficulty, labor, and unavoidable expense of executing the surveying required under such a contract.

Seventh question. Is it customary for surveyors when executing surveying contracts to take receipts for their incidental expenses, such as payments made to chainmen, axemen, and choppers; also for provisions and travelling expenses? If you know anything on this subject, state it.

Eighth question. Do you know whether said Peebles paid any, and if any, what sums of money for said incidental expenses?

Ninth question. Do you know whether said Cuthbert refused to pay said Peebles for his services under said contract? If yea, state why he did so refuse, and whether he made any complaint against said Peebles.

Tenth question. Do you know of any instructions given by said Cuthbert, or under his authority, to said Peebles, relative to the execution of his said contract? If yea, state it.

Eleventh question. Do you know any other matter or thing relative to this claim? If yea, state it fully and particularly.

J. F. POLK,

Attorney of Record for Claimant.

WASHINGTON CITY, D. C., June 27, 1856.

I have no questions to ask.

M. BLAIR.

IN THE COURT OF CLAIMS.

JOHN PEEBLES *vs.* THE UNITED STATES.

Be it known that on this 4th day of August, A. D. 1856, I, Richard B. Owen, a commissioner for taking testimony, duly appointed by the honorable the Court of Claims, did, at the hour of 10 o'clock a. m., call and cause to come before me, at my office in the city of Mobile, Elam Philips, C. K. Godbold, and David Barton, to testify and the truth to say as witnesses for the claimant in the above entitled cause, now pending and undetermined in said Court.

And the said witnesses having been by me first sworn to speak the truth, the whole truth, and nothing but the truth, in said cause, did thereupon, in answer to the interrogatories hereinafter written, depose and say as follows, to wit:

That is to say, Elam Philips, being first examined, in answer to the interrogatories, answers and says as follows, to wit:

Interrogatory 1. What is your name, age, your occupation and place of residence during the past year?

Answer. My name is Elam Philips, I am fifty-two years of age, am employed by the general government as an assistant light-house keeper, and have resided near Mobile for the past thirty years.

Interrogatory 2. Have you any interest, direct or indirect, in the claim which is the subject of inquiry, and are you related to the claimant, and in what degree?

Answer. I have no interest whatever in the claim, and am in no way related to the claimant.

Interrogatory 3. Are you acquainted with John Peebles, the claimant in this cause? If yea, state how long you have known him, and what is his character as a man and a surveyor, and also for truth and fidelity in the discharge of his professional duties.

Answer. I have known Mr. Peebles for about six years, and have been acquainted with his character for twenty-five years. His

character as a man is good ; no one has a better character. He has the character of a competent surveyor. I have myself employed him as such, and always found him perfectly competent. He stands high for truth and fidelity in the discharge of his professional duties.

Interrogatory 4. Have you any knowledge of a contract entered into by said Peebles and John A. Cuthbert, in virtue of which said Peebles was to execute certain surveying for the United States? If yea, state the terms of said contract, when it was entered into, the purpose for which the surveying was to be done, and in what capacity said Cuthbert entered into the contract.

Answer. I know of the contract inquired of. Mr. Cuthbert was acting here as timber agent of the government, and conducting certain prosecutions against persons for depredations upon the public lands. In a conversation with said Cuthbert I asked him why he so seldom succeeded in convicting the parties indicted, and his reply was that it was on account of the difficulty in defining the particular tracts upon which depredations had been committed. I then asked him why he did not employ some competent and reputable surveyor to run out the lines, &c. He said he would gladly do so if he knew where to find such a one; I thereupon recommended to him the claimant, asking him at the time whether he had authority to employ a surveyor, and whether he or government would be responsible for his pay. He said he was fully authorized to employ, and the government would be bound for the pay. He asked me to send the claimant to him, which I did, and was afterwards told by Cuthbert that he had employed him. I do not know on what terms the claimant was employed. It was entered into some time in the month of December, 1853. The purpose for which the surveying was to be done was to identify the tracts upon which trespasses had been committed, Mr. Peebles being acquainted with all the old lines and surveys. Cuthbert told me he was authorized, as the agent of the government, to make the contract, and that government would be bound by his act.

Interrogatory 5. Do you know whether said Peebles was commissioned by said Cuthbert to execute surveying under said contract?

Answer. I only know from claimant that he was so commissioned. I advised him before he was employed to obtain such a commission ; and he afterwards told me that he had gotten one. My reason for so advising him was, that I knew that people in the country looked with distrust and ill-feeling upon persons surveying through the country, and it was best for claimant to be able to show proper authority for his acts.

Interrogatory 6. Do you know whether said Peebles executed said contract? If yea, state all you know on that point. State also what you know of the time he was employed, the difficulty, labor, and unavoidable expense of executing the surveying required under such a contract.

Answer. I know that he was busily employed in the woods running out lines ; saw him so employed, and was with him several times. Saw him in attendance at court with copies of maps of townships of this district ; saw them referred to by the receiver of the land office,

Mr. Houston, and pronounced by him correct. Said maps were used in the prosecution of trespassers on the public lands. He was employed from about Christmas to some time in the succeeding fall. I know that the claimant paid his own expenses for chain-bearers, expenses of himself and horse, furnished his own instruments, and that the difficulty and labor of such employment were great; the unavoidable expense of it amounting to not less than \$150 per month, exclusive of what would form a reasonable compensation for himself. I am not acquainted, however, with the terms of the contract with Cuthbert. I am well acquainted with this part of the country and the difficulty attendant on surveying here, and know that \$150 per month for the expenses of a survey is a low estimate.

Interrogatory 7. Is it customary for surveyors, when executing surveying contracts, to take receipts for their incidental expenses, such as payments made to chainmen, axemen, and choppers; also for provisions and travelling expenses? If you know anything on this subject, state it.

Answer. In executing the contract for the kind of surveying to be done by the claimant in this case it would be impossible to take vouchers and receipts for all the incidental expenses.

Interrogatory 8. Do you know whether said Peebles paid any, and if any, what sums of money for said incidental expenses?

Answer. I know that Peebles paid out money for said expenses; saw him from time to time paying out money, but cannot say how much he paid.

Interrogatory 9. Do you know whether said Cuthbert refused to pay said Peebles for his services under said contract? If yea, state why he did so refuse, and whether he made any complaint against said Peebles.

Answer. Cuthbert did refuse to pay Peebles for his services under said contract; and stated as the reason for such refusal that Peebles refused to give testimony in court.

Interrogatory 10. Do you know of any instructions given by said Cuthbert, or under his authority, to said Peebles relative to the execution of his said contract? If yea, state it.

Answer. I know of no such instructions.

Interrogatory 11. Do you know of any other matter or thing relative to this claim? If yea, state it fully and particularly.

Answer. I know that the claimant was fined for non-attendance at court as a witness, he then being absent in the necessary discharge of his contract; and that, too, in a portion of the country where a letter could not reach him. I was applied to to learn where a letter would reach him requesting his attendance; and I am satisfied that could the claimant have been advised of his being wanted as a witness he would have been in attendance.

ELAM PHILIPS.

To the interrogatories above written, and which have just been answered by Elam Philips, David Barton being next sworn, deposes and says: The said Barton having been present when said interroga-

tories were written out, and having had, before answering, each interrogatory carefully read over to him.

To the first interrogatory he says: I am forty-nine years of age, am a farmer by occupation, and have resided for the past year in Mobile county. My name is David Barton.

To the second interrogatory he says: I have no interest, direct or indirect, in the claim, nor am I in any way related to the claimant.

To the third interrogatory he says: I have known the claimant for thirty-odd years, and have been intimately acquainted with him for the last five or six years. His character as a man is good, and he has the reputation of a first-rate surveyor. He has ever been known to be truthful and faithful in the discharge of his professional duties. As a man he stands high as regards truth, veracity and honesty.

To the fourth interrogatory he says: I know of the contract inquired of. Cuthbert was to give him a hundred dollars a month, and was also to pay all his expenses for travelling, chain-bearers, axemen, &c. The contract was entered into on the 26th December, 1853. The purpose for which the surveying was to be done was for the purpose of identifying the tracts of public lands on which trespasses were alleged to be done. Cuthbert was timber agent for the United States for the southern district of Alabama, and in this capacity entered into said contract. I would state that my reason for knowing the terms of the contract, &c., is, that I was present when it was made, and was called upon to witness it. The contract was a verbal one. I was, at the time of the making of the contract, a deputy marshal, and also Cuthbert's assistant in the timber agency, acting under a written commission from him.

To the fifth interrogatory he says: Peebles had a written commission from Cuthbert to execute survey under said contract, and also it was a part of his duty to attach timber which he found cut upon public land.

To the sixth interrogatory, he says: Peebles did execute said contract on his part. A few days after the contract was made, Cuthbert sent him out to begin the execution of it, and for seven months he was diligently employed in the discharge of his duties under it. He surveyed large tracts of land, and also attached a large quantity of timber which had been cut on public land, for which trespass Judge Cuthbert made compromises with the trespassers.

At times, also, I would attach timber which I had cause to believe had been cut on public lands, and would send the claimant to survey the land, in order to make the proof that depredation was committed on public land. From my knowledge of the time he was employed, and of the kind of work he was sent out to do, I should say that the difficulty, labor and unavoidable expense he incurred were very great. His expense account, as charged by him, and which has been shown me, is very moderate, and its smallness can be accounted for only by the fact that, being well acquainted throughout the country, he met with facilities and accommodations in travelling and board which a stranger would not have obtained.

To the seventh interrogatory he says: The expenses of such a survey as the one made by claimant consisted of a number of very small

items, and it is not usual to take vouchers or receipts for such outlays, and frequently it is the case that it is impossible to get the receipts if required.

To the eighth interrogatory he says: I know that Peebles did pay out money for said incidental expenses, but do not know the amounts.

To the ninth interrogatory he says: Cuthbert did refuse to pay Peebles for his services under the contract. He directed me, by letter, to give Peebles notice that his services were no longer required, and afterwards told me that his reason for not embracing the claimant's account for services in the account forwarded by him to Washington was, that he thought the government would not allow that account, he (Peebles) being employed by the month, and the regulations requiring that the number of miles surveyed by each surveyor should be specified, which could not be done in claimant's case. He made no complaint against claimant except in one instance, which was for non-attendance as a witness at court, at the time alluded to by the preceding witness, Mr. Philips. I remember the occasion of his non-attendance so alluded to, and it was owing to the following reason: He was present at the meeting of the court, but the court not being in session for several days during the term, he was sent off by Cuthbert to survey a piece of land on which trespasses had been committed and timber attached, and whilst so engaged the court met again before he had had time to return. His name being called in other cases pending, and he not answering, was fined.

To the tenth interrogatory he says: The instructions given him by Cuthbert were to survey all tracts of land supposed to be government lands, on which depredations were made; and when he had so surveyed them, to prepare maps and be prepared to testify in accordance with the facts of his survey, which instructions I know were carried out by claimant. After he had been so employed for seven months he made out his account, being at the time at my house, and then presented the same to Cuthbert at his residence, twenty-eight miles below the city, and in a few days after Cuthbert wrote to me directing me to dismiss him from the public service.

To the eleventh interrogatory he says: I know that the amount agreed to be paid claimant was \$100 per month and his expenses. In the conversation between the parties as to what would be the amount of expenses, it was understood that these would not fall short of \$150 per month. It was, however, agreed that he was to charge the government only with money actually paid out by him; in other words, if he got board, or travelling expenses, or labor, free of charge, he was not to charge the same.

The claimant is an old resident of this part of the country, is well known all over the district, and can, in consequence, obtain facilities in the performance of surveying operations at much less expense than is usual.

DAVID BARTON.

At this point the further examination of witnesses in this cause was adjourned to Tuesday, August 5, 1856, at 10 o'clock a. m.

R. B. OWEN, *Commissioner*.

TUESDAY, *August 5, 1856.*

The examination being this day resumed, pursuant to adjournment, C. M. Godbold was duly sworn, and thereupon the same interrogatories which were propounded to Elam Philips and David Barton and answered by them, which are above written, were propounded to the said Godbold, and in answer thereto he says as follows:

To the first interrogatory he says: My name is Cade M. Godbold; I am forty-seven years of age, and United States marshal for the southern district of Alabama, and have resided for several years past in Mobile.

To the second interrogatory he says: Have no interest in this claim, and am in no way related to the claimant.

To the third interrogatory he says: Have known the claimant for at least twenty years. His character both as a man and a surveyor stands A, No. 1. Has frequently surveyed for me, and has always performed his duties to my entire satisfaction.

To the fourth interrogatory he says: I have no personal knowledge of the times of the contract inquired of; but I always recognized him in my official capacity as the surveyor of the timber agency in this district, and know that he was so recognized by Judge Cuthbert, the agent. He was always considered as subpoenaed at every term of the court, and it was understood between him and me that he was to be in attendance to answer all subpoenas in my hands for him. In my conversations with Cuthbert and his deputies the claimant was recognized by them as one of the surveyors of the agency. Cannot state as to the time at which the contract was entered into. The purpose of the surveying was to identify the tracts of land on which depredations had been made as government land, and to make the proof necessary for the conviction of the depredators, and for the condemnation of timber found cut upon government land.

To the fifth interrogatory he says: I do not.

To the sixth interrogatory he says: Can only speak as to the performance of the contract by claimant, on his part, to this extent, *i. e.*, I knew him to be repeatedly summoned as a witness, and to be in attendance as such on the trial of cases of trespassers on the public land. His testimony was efficient in the prosecution of such cases; and from the testimony he was able to give I judged he had understood and performed his business well. The labor and difficulty attendant upon the discharge of the duties of surveyor to the agency must have been great; and a great deal of unavoidable expense must have been incurred. I have examined the account of the claimant and think the same extremely moderate; so much so as to induce the belief that he had not charged therein many items of expense necessary to be incurred.

To the seventh interrogatory he says: I cannot answer as to the custom prevailing among surveyors.

To the eighth interrogatory he says: I know nothing of the expenditure of the claimant.

To the ninth interrogatory he says: Do not know as to Cuthbert's

refusal to pay. I never heard of any complaint from Cuthbert against the claimant as to the performance of his duties under the contract.

To the tenth interrogatory he says: I do not know what instructions were given by Cuthbert or under his authority.

To the eleventh interrogatory he says: Have answered all that I know in relation to the matter.

C. M. GODBOLD.

THE STATE OF ALABAMA, *Mobile county.*

On the fourth and fifth days of August, anno Domini 1856, personally came Elam Philips, David Barton, and C. M. Godbold, the witnesses within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the deposition of the said Elam Philips were written down by the commissioner and then proposed by him to each of the witnesses; and the answers thereto were written down by the commissioner in the presence of the witness answering, who then subscribed each his own deposition in the presence of the commissioner. The depositions of Elam Philips, David Barton, and C. M. Godbold, taken at the request of John Peebles, to be used in the investigation of a claim against the United States now pending in the Court of Claims in his name. The adverse party was notified, did not attend, and did not object.

R. B. OWEN,
Commissioner.

Commissioner's fees \$20; paid by claimant.

JOHN PEEBLES *vs.* THE UNITED STATES.

SIR: Please take notice that at ten o'clock in the forenoon, on the 20th day of October, 1857, at the office of R. B. Owen, esq., one of the commissioners for taking testimony under appointment of the Court of Claims, and in the city of Mobile, Alabama, I purpose to take the deposition of John A. Cuthbert, by said R. B. Owen or some other like commissioner in the said city of Mobile, to be used in the above entitled case now pending in said court.

DANIEL RATCLIFFE,
Assistant Solicitor for the Court of Claims.

J. F. POLK, Esq.,
Attorney of record for the petitioner.

Notice acknowledged October 2, 1857.

J. F. POLK,
Attorney of record for Peebles.

First question. State your name, age, occupation, and place of residence the past year.

Second question. Have you any interest, direct or indirect, in the

claim which is the subject of inquiry, and are you related to the claimant? If yea, say in what degree.

Third question. Are you acquainted with John Peebles, the plaintiff in this case, and if so when did that acquaintance commence and under what circumstances?

Fourth question. What was your relation to the government of the United States when you first became acquainted with him, Peebles?

Fifth question. State whether you made a contract with Mr. Peebles for the survey of any lands belonging to the United States in the southern district of Alabama, and if yea, give the particulars of said contract.

Sixth question. State whether you authorized the said Peebles at any time to incur expense on account of the United States, connected with the lands or interest of the said United States, of which you were the agent in southern Alabama.

Seventh question. State whether any money was paid by you as agent of the United States to the said Peebles, and if yea, under what circumstances the same was paid, particularly as to whether you regarded the said payment as a full satisfaction or not for any service rendered by him in connexion with your agency.

Eighth question. Do you know any other matter or thing relative to the claim? If yea, state it fully and particularly.

DANIEL RATCLIFFE,

Assistant Solicitor of the Court of Claims.

OFFICE OF CHIEF CLERK COURT OF CLAIMS,

October 2, 1857.

I hereby certify that the foregoing are true copies of the original notice and interrogatories filed in this office in the above case.

In testimony whereof I have hereunto set my name and [SEAL.] affixed the seal of said Court, at Washington, on the day and year above written.

EDGAR M. GARNETT,

Assistant Clerk of the Court of Claims.

IN THE COURT OF CLAIMS.

JOHN PEEBLES vs. THE UNITED STATES.

The deposition of John A. Cuthbert, a witness on behalf of the defendant in said cause, produced, sworn, and examined before me, one of the commissioners for taking testimony, under appointment of said Court, on this 20th day of October, A. D. 1857.

The said witness having been duly sworn by me, did depose and testify as follows:

That is to say, to the first question, viz: "State your name, age, and occupation, and place of residence for the last year," he says:

"My name is John A. Cuthbert; my age is 69 years; I am a lawyer

by profession, but I am engaged now in farming in a small way ; I reside in the lower part of Mobile county, on Mobile bay."

To the second question, viz: "Have you any interest, direct or indirect, in the claim which is the subject of inquiry, and are you related to the claimant, if yea, say in what degree," he says:

"I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am not related to the claimant in any way."

To the third question: "Are you acquainted with John Peebles, the plaintiff in this case, and if so, when did that acquaintance commence, and under what circumstances," he says:

"I am acquainted with John Peebles, the plaintiff in this case; my acquaintance with him commenced in December, 1853. He had been recommended to me as a competent surveyor, by Elam Philips, and in consequence of that recommendation I had an interview with him on the street in Mobile, in which I gave him to understand that I was disposed to employ him as a surveyor, in making surveys connected with the timber agency. But at that time I made no contract with him."

To the fourth question: "What was your relation to the government of the United States when you first became acquainted with him, Peebles," he says:

"I was timber agent of the United States for the southern district of Alabama when I became acquainted with John Peebles."

To the fifth question: "State whether you made a contract with Mr. Peebles for the survey of any lands belonging to the United States in the southern district of Alabama, and if yea, give the particulars of said contract," he says:

"Some time in the early part of 1854, Mr. Peebles gave me information of a case of trespass, by cutting light wood on government land, in Clarke county; and I desired him to survey a section, promising to pay him the customary charges for surveying it. I also employed him to survey a section from which, as I had been informed, cypress trees had been cut by a man named Strand. This land was, as I understood, in deep swamps, and as I supposed that finding the lines would be attended with much more labor than in common cases, I engaged to pay his chain carriers, besides allowing the regular fees of surveying. I believe that he executed the surveys in both of these cases." Also, in the last of July, or beginning of August, 1854, I employed him to survey the lands in Washington county, on which indictments for cutting timber were then pending. He utterly failed to execute any part of this last contract. These were the only contracts I ever made with him for surveying, except as I will hereafter explain."

To the sixth question: "State whether you authorized the said Peebles, at any time, to incur expense on account of the United States, connected with the lands or interest of the said United States, of which you were the agent in southern Alabama," he says:

"I never, except in the instance stated in the answer to the preceding interrogatory, authorized Peebles at any time to incur expense on account of any matters connected with the timber agency."

To the seventh question: "State whether any money was paid by you as agent of the United States to the said Peebles, and if yea,

under what circumstances the same was paid, particularly as to whether you regarded the said payment as a full satisfaction or not for any services rendered by him in connexion with your agency," he says:

"In the summer of 1854, and I think in the month of June, I, as timber agent of the United States, paid to the said Peebles twenty-five dollars. He asked me for that sum without presenting any account, and I paid it to him in part satisfaction for the two surveys I have already stated that he made. I believe that fifty dollars would be a fair compensation for the two surveys. He never performed any other services for me as timber agent."

To the eighth question: "Do you know any other matter or thing relative to this claim, if yea, state it fully and particularly," he says:

"In my first interview with Peebles, mentioned in answer to a previous interrogatory, I had it in contemplation to employ a surveyor by the month, to make the surveys required for prosecutions recently commenced, amounting, I believe, to more than fifty. And I spoke to Peebles with that matter in my mind, but I made no contract with him. I was afterwards led to believe that these surveys would be better executed by two gentlemen named Bradford, sons of General Bradford, formerly surveyor general of Mississippi, and I engaged them by the month to make these surveys. There was no indictment for any trespass in the county of Clarke. I was informed that many spars had been cut on government lands in Clarke county. In a subsequent interview I proposed to Peebles that if he would go into Clarke county and ascertain the government lands on which timber had been cut, and the names of the trespassers, I would employ him in surveying such lands, but that he should report every case to me for my decision before he should make the survey, and I would pay him customary rates for such surveys as he should make. Peebles agreed to this proposal, and I informed him of several neighborhoods in which trespasses had been made. Peebles went to Clarke county, as I understood, to carry out this arrangement. Not long after he reported to me the case of cutting the light wood, as I have already stated, and I never heard anything more from him in relation to any trespass in Clarke county. I was disappointed that I had no prosecution for trespass in Clarke county, where I knew that a great deal of spar timber had been cut, and on my making inquiry for Peebles, at the United States court in Mobile, in the spring of 1854, David Barton told me that Peebles had been in his employment for a considerable time hunting up cases for Barton to report as informer. Peebles came to Mobile about the end of the term of the court, and I then employed him to make the survey of the cypress timber, mentioned in answer to a previous question.

"I was in the constant practice of giving to surveyors whom I employed something like a commission, which I did not consider as having any force in itself, but it was intended to give them the standing of government officers, in order to prevent ill usage from trespassers and to secure the confidence of men disposed to enforce the law. I gave such a commission to Peebles when he was about to go to Clarke county.

"I am aware that Elam Philips has testified that I informed him that I had employed Peebles by the month; in this testimony Philips has misunderstood or he has misrepresented me. I remember that in

answer to some inquiry from him, I told him in general terms that I had seen Peebles, and that I expected to employ him. I am perfectly sure that I did not tell him that I had engaged Peebles by the month. If I had told him so I would have said that which I knew to be false. Whatever may have been Philips' understanding of my language, it is not the fact that I employed Peebles by the month.

JOHN A. CUTHBERT.

STATE OF ALABAMA, }
Mobile county. } ss.

Personally came, on this 20th day of October, A. D. 1857, John A. Cuthbert, the witness named within, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of John A. Cuthbert, taken at the request of D. Ratcliffe, esq., solicitor of the Court of Claims, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of John Peebles. C. A. Bradford, esq., attorney in Mobile for claimant, was notified, did attend, but did not cross-examine because the commissioner declined to permit him so to do, as the commissioner conceived the deposition was to be taken upon the written interrogatories, which on their face were shown to have been on file, and were not crossed.

R. B. OWEN,
Commissioner.

Commissioner's fee \$5, to be taxed.

JOHN PEEBLES *vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the Court.

This is a claim founded upon services alleged to have been rendered to the United States as a surveyor.

The petitioner alleges that on the 26th of December, 1853, Mr. John A. Cuthbert applied to him to execute certain surveying for the government, Mr. Cuthbert being the timber agent for the southern district of Alabama, and it being necessary to employ surveyors to run out the lines of the government lands. That Cuthbert and the claimant made a verbal contract, by which Cuthbert agreed to pay him \$100 per month and his necessary expenses for travel, chain carriers, &c. That the claimant was to give his entire time to this service, to run the lines of tracts trespassed upon when required by Cuthbert, &c., and to testify to the same on the trials in court, &c. That he was in the employ of Cuthbert for the period of seven months, and at two terms of the circuit court he testified in trials for depre-

dations on public lands. His account amounted to \$845 25, which Cuthbert refused to pay, saying he had no funds.

The first important question in the case is, whether there was any such contract, as is alleged, between Cuthbert and the claimant.

David Barton testifies that Cuthbert "was to give the claimant a hundred dollars a month, and was also to pay all his expenses for travelling, chain-bearers, axemen, &c. The contract was entered into on the 26th of December, 1853." * * * "I would state," he says, "that my reason for knowing the terms of the contract, &c., is, that I was present when it was made and was called upon to witness it." Elam Philips, after stating a conversation with Cuthbert, says: "I was afterwards told by Cuthbert that he had employed him (the claimant.) I do not know on what terms the claimant was employed. It was entered into some time in the month of December, 1853."

It thus appears that Barton testifies positively that there was a contract between Cuthbert and the claimant, and states its terms. Phillips states that there was a contract, but is unable to state what its terms were. Upon this question, we have the statement of Cuthbert himself, contained in a letter from Cuthbert to the chief of the Bureau of Yards and Docks, which is produced in compliance with a request made by the complainant; a copy of that letter is as follows:

"WASHINGTON, *March 14*, 1857.

"DEAR SIR: Your communication of the 5th instant has been received. I have endeavored to recall to mind the material facts in relation to the claim of John Peebles against the United States, and I feel certain that my recollection of them is clear and reliable. The claim is fraudulent in every part.

"I engaged the Bradfords to survey lands in the county of Washington, in preparation for prosecutions that had been commenced. I had been in the county of Clarke, and had there seen a considerable number of ship spars hewn, but not yet hauled away, and I had information that persons not known to me had been getting spars in another part of the same county. I engaged Peebles to go into Clarke county to ascertain the government land on which spars had been cut, and to survey them.

"I expected him to report what work he might do in a shape in which I could act on it, and to pay him the customary price for what work he might do. I did not enter into any contract to employ him by the month or to pay his expenses. In all cases when I employed surveyors, I found it expedient to give them written authority, in order to prevent their being interrupted by trespassers, who might wish to prevent the surveys.

"Mr. Peebles reported to me one case of trespass where lightwood had been cut on the public lands. The lightwood was seized under my authority, and a prosecution was commenced and Mr. Peebles was summoned as a witness and failed to attend. This was the only case of which he ever gave me information, and he was never summoned as a witness in any other case by my direction, or within my knowledge. I remember well that during the time covered by his account,

I inquired of David Barton whether he knew where Mr. Peebles was, for I was surprised that he gave me no information about spars; and Barton told me in reply that Peebles was in his employment, hunting trespassers for him, Barton, to return as informer.

"In the middle or latter part of April, 1854, a raft of cypress logs was brought down Mobile river, which I was informed had been taken from government land. I engaged Peebles to go to the place and ascertain, by making a survey, whether the land from which they had been taken belonged to the government. I have no doubt that Peebles made this survey and the one above mentioned. He never reported any other survey to me. I have never heard of his making any other survey for the government. He never gave me any information in relation to trespasses except in the two cases above mentioned.

"He asked me for twenty-five dollars, saying that he wanted money to pay chain carriers, not presenting any account to me. I paid him twenty-five dollars, and he gave me a receipt, the language of which seems to favor his claim; I have no recollection why the receipt was written in this form, but I conjecture that it was so written at the request of Peebles with the design of entrapping me.

"I suppose that there is a balance due to Peebles on the two surveys above mentioned. But his account is fraudulent in toto.

"With high regards,

"JOHN A. CUTHBERT.

"JOS. SMITH, Esq.,

"Chief of Bureau of Yards and Docks."

Mr. Cuthbert, in his deposition, states that in December, 1853, he had an interview with the claimant, in which he gave him to understand that he was disposed to employ him as a surveyor in making surveys connected with the timber agency, but at that time he made no contract with him. In answer to a question whether he made a contract with the claimant for the survey of any lands belonging to the United States, in the southern district of Alabama, the witness answers as follows:

"Some time in the early part of 1854, Mr. Peebles gave me information of a case of trespass by cutting the lightwood on government land in Clarke county, and I desired him to survey a section, promising to pay him the customary charge for surveying it. I also employed him to survey a section from which, as I had been informed, cypress trees had been cut by a man named Strand. This land was, as I understood, in deep swamps, and I supposed that, finding the lines would be attended with much more labor than in common cases, I engaged to pay his chain carriers, besides allowing the regular fees of surveying.

"I believe that he executed the surveys in both of these cases.

"Also, in the last of July or beginning of August, 1854, I employed him to survey the lands in Washington county, on which indictments for cutting timber were then pending. He utterly failed to execute

any part of this last contract. These were the only contracts I ever made with him for surveying, except as I will hereafter explain."

He also says: "I never, except in the instance stated in the answer to the preceding interrogatory, authorized Peebles at any time to incur expense on account of any matters connected with the timber agency."

To another question he answers: "In the summer of 1854, and I think in the month of June, I, as timber agent of the United States, paid to the said Peebles twenty-five dollars. He asked me for that sum without presenting any account, and I paid it to him in part satisfaction for the two surveys I have already stated that he made. I believe that fifty dollars would be a fair compensation for the two surveys. He never performed any other services for me as timber agent."

In his answer to the eighth interrogatory, he says: "In my first interview with Peebles, mentioned in answer to a previous interrogatory, I had it in contemplation to employ a surveyor by the month, to make the surveys required for prosecutions recently commenced, amounting, I believe, to more than fifty, and I spoke to Peebles with that matter in my mind, but I made no contract with him." He also says: "I am aware that Elam Phillips has testified that I informed him that I had employed Peebles by the month. In this testimony Phillips has misunderstood, or he has misrepresented me. I remember that in answer to some inquiry from him, I told him in general terms that I had seen Peebles and that I expected to employ him. I am perfectly sure that I did not tell him that I had employed Peebles by the month. If I had told him so, I should have said that which I know to be false. Whatever may have been Phillips' understanding of my language, it is not the fact that I employed Peebles by the month."

The only evidence of the alleged contract which specifies its terms, is contained in the testimony of Barton. This is met by the positive denial of Cuthbert that any such contract was made. The allegations in the petition, therefore, are not proved. It is upon the existence of such a contract that the claim is based, and the denial by Cuthbert must be regarded as neutralizing the effect of Barton's testimony. The testimony of Phillips is merely that Cuthbert told him that he had employed Peebles, but he knows nothing of the terms of the contract, and this also is denied by Cuthbert. But even if Cuthbert had not denied it, the mere fact that Cuthbert had employed Peebles by no means sustains the allegations in the petition, and that he was employed to a certain extent is admitted by the solicitor throughout. Whatever services he did render, Mr. Cuthbert thinks would be sufficiently compensated by the sum of fifty dollars; and that sum, deducting \$25 heretofore paid him, is the only definite evidence of the value of his services, and of the relief to which he is entitled. For that sum a bill will be reported to Congress for the petitioner.

